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SUPREME COURT, U.S.

In UNITED STATES SUPREME COURT

Washington, D.C. 20543

A.D. 1980

Case No. 80-5355 (HC)

ORIGINAL COPY

STATE ex rel., LAWRENCE CALVIN WHITTEMORE,

Petitioner-Appellant,

vs.

CIRCUIT COURT FOR KENOSHA COUNTY,
HONORABLE BURTON A. SCOTT,
presiding,

Respondent-Appellee.

REPLY BRIEF TO MOTION TO DISMISS

Prepared By,

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December 8th, 1980 A.D.

In UNITED STATES SUPREME COURT
Washington, D.C. 20543
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STATE ex rel., LAWRENCE CALVIN WHITTEMORE,

Petitioner-Appellant,

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REPLY BRIEF TO MOTION TO DISMISS

Respondent-appellee has submitted a 'Motion to Dismiss' in the entitled case before this Court.

Petitioner-appellant replies thereto pursuant to Rules of the Supreme Court, Rule 16.5 opposing the Respondent-appellee's motion.

THE JURISDICTION OF THIS COURT

The United States Supreme Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1257 (1) wherein the State of Wisconsin does not have a comparable statute to 18 U.S.C. § 1581, and as a consequence, peonage is ipso facto the results of criminal prosecutions in the state.

Probations and paroles are subject to the same constitutional infirmity.

See, Harris v. Brewer (CA8th, 1970) 434 F2d 166 and Miller v. Carter (CA9th, 1970) 434 F2d 824, cert denied 402 US 972, which delineates that:

> "Whether a prisoner has waived his right to raise a federal constitutional claim is a matter of federal law."

In any case, petitioner-appellant is entitled to enforce the United States Supreme Court's ruling in Sandstrom v. Montana, 442 U.S. 510 (1979) whether on appeal or certiorari as a person of a 'class' of persons under 28 U.S.C., Fed.R.Civ.Proc., Rules 23(3), 71 and 81 (a)(2).

See, Adderly v. Wainwright (MD Fla 1967) 272 F Supp 530, 11 FR Serv2d, 81a.22, Case 3.

Adderly v. Wainwright (MD Fla 1968) 46 FRD 97, 13 FR Serv2d 23.3, Case 2.

McGautha v. California, (1971) 402 US 183, 91 S Ct 2726, 28 L ed2d 711.

Mead v. Parker, (CA9th, 1972) 464 F2d 1108, 16 FR Serv2d 1029.

THE FACT OF WISCONSIN JURIES PRIOR TO MAY 18th, 1978 A.D. and COUNSEL.

At the time of petitioner-appellant's trial in August, 1977 A.D. Wisconsin Statutes at Section 255.02 (1)(b) read as follows;

> 255.02 Who are exempt. (1) The following persons are exempt from serving as jurors;
>
> (b) Attorneys at law; physicians; surgeons; dentists; Christian Science practitioners and readers; and ministers of the gospel or any religious society.

The above statutory law was in effect until May 18th, 1978 A.D. despite the Wisconsin Constitution at Article 1 Section 19 which provides;

> Religious tests prohibited. SECTION 19. No religious tests shall ever be required as a qualification for any office of public trust under the state, and no person shall be rendered incompetent to give evidence in any court of law or equity in consequence of his opinions on the subject of religion.

To date there is no known situation wherein a licensed attorney in the State of Wisconsin has objected upon a 'conflict of interest' issue as related to the enpanelment of juries to deliberate on issues of fact, wherein the juror 'qualifications' were an issue as per exemptions based upon religious grounds or beliefs.

Consequently, the jury enpaneled at the time of petitioner-appellant's trial in the year 1977 A.D. was constitutionally infirm, and the due 'effectiveness of counsel' was a nullity perforce the 6th Amendment of the United States Constitution.

CONCLUSION

Petitioner-appellant concludes this brief reply to the Respondent-appellee's 'Motion to Dismiss' based upon the contended 'lack of jurisdiction' by this Court.

Petitioner-appellant is not privy to what the Wisconsin Supreme Court thinks, nor, believes that the opposing counsels are privy to such 'thinking' either, regardless of the existing "professional collegiality" between licensed attorneys and Judges.

The pro se petitioner can never expect to be given due respect or credence by licensed attorneys per the meanings and procedural options as relevant to the American Jurisprudential System.

On the other hand, a pro se applicant eventually learns that, any such case presented by licensed attorneys, is, that attorney's version of the matter, and such version lies within the imagination of the attorney and the Judges of the Courts.

Neither 'imagination' can be ascertained as absolutely correct or true.

Respectfully Submitted By,

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December 8th, 1980 A.D.,
at Box C Waupun, WI. 53963.

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